

## REMARKS

After the foregoing amendment, claims 1-13 as amended, are pending in the application. Claim 13 has been amended.

### **Restriction under 35 U.S.C. § 121**

The Examiner has required the Applicants to elect between species a, Figs. 2-10, [first embodiment] and species b, Figs. 11-19, [second embodiment]. Applicants respectfully traverse the election requirement.

Applicants first submit that species I and II are within the same art and there is no additional burden on the Examiner to examine all the claims of species I and II. Further, for a restriction under 35 U.S.C. § 121 to be proper, the Examiner must comply with MPEP § 808 which requires that the Examiner state why the inventions, as claimed, are patentably distinct and the reasons for insisting upon a restriction. Applicants submit that the Examiner has not met his burden and respectfully request that the Examiner state why the inventions, as claimed, are patentably distinct.

Species a. is considered by the Examiner to correspond to Figs. 2-10 and the first embodiment. However, according to paragraph [0129] of the present specification, Figs. 15-19 also correspond to the first embodiment. Therefore, species a. corresponds to Figs. 2-10 and 15-19.

Species b. is considered by the Examiner to correspond to Figs. 11-19. As clearly shown, Fig. 2 used to describe the first embodiment and Fig. 11 used to describe the second embodiment are identical. As described in paragraph [0125] and [0133] of the present specification, description of the optical disc drive of the second embodiment is partly omitted. This is because the drives of the first and second embodiments have common components and redundant descriptions of such components are avoided with respect to the second embodiment. Thus, species b. corresponds to not only Figs. 11-19 but also to Figs. 2-10.

The optical disc drive according to the second embodiment detects a distance between a target data storage layer and the focal point of the light beam by the level of the output

signal of the focus detector. (See paragraph [0126] of the present specification). However, the foregoing feature is not recited in pending claims 1 to 13.

Each invention according to claims 1 to 13 reads on both the first embodiment and the second embodiment. See [0125] of the present specification, for example. Therefore, claims 1 to 13 are readable on both species a. and b. and are generic to species a and b.

Applicants respectfully submit that the embodiments described in Figs 1-10 and 11-19 are not patentably distinct. Accordingly, Applicants respectfully request reconsideration and withdrawal of the requirement to elect one of species a or b.

### **Election**

In the event the Examiner maintains the election requirement, Applicants provisionally elect species a (Figs. 2-10) with traverse. Applicants further submit that all claims 1-13 read on both species a and species b.

### **Claim 13**

The Examiner stated that claim 13 would be rejected under 35 U.S.C. § 101 and suggested an amendment. Applicants have amended claim 13 according to the Examiner's suggestion.

**Conclusion**

In view of the foregoing election and amendment, prompt examination and allowance of the application is solicited.

Respectfully submitted,

  
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(Date)

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